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SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 683, Misc.

WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

MOTION TO ADVANCE

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ON MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS, AND PETITION FOR A WRIT OF MANDAMUS

MOTION TO ADVANCE

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW the petitioner and moves the Court to advance consideration of the Motion for Leave to file Petition for a Writ of Mandamus and Petition for a Writ of Mandamus to such early date as may be convenient to the Court during the present term.

In support of this Motion, petitioner shows that unless this case is advanced for consideration, mere lapse of time may defeat the cause before it can be reached in the normal course of business of this Court, moreover, the time prob-

lem in this case is inherent and does not result from any lack of diligence or fault of petitioner.

The case in this Court seeks to require the Respondent to convene a court of three Federal judges pursuant to application therefor presented by petitioner on the 15th of March, 1958. Petitioner's complaint below, for injunctive and declaratory relief, is a voting franchise case challenging the constitutionality of a Georgia statute. Under this statute certain of the defendants would sometime prior to the General Election to be held November 4, 1958 devalue petitioner's vote cast in the Georgia Democratic Primary Election of 1958.

There is no statute requiring the party defendants to hold a primary. (But, since the enactment of the statute attacked in 1917, and probably long before, the defendant party has never failed to hold a primary for statewide offices.) The law of Georgia under attack requires that the party defendant tabulate results obtained from the count of the popular vote cast in the Primary in such a manner as to drastically reduce the value of the petitioner's ballot. Petitioner seeks, *inter alia,* to prevent the party defendants from taking this contrived additional step and certifying the result so obtained to the defendant Secretary of State of Georgia who certifies the candidates for the general election ballot.

Defendants Bell and Stewart made a public announcement on March 8, 1958 that a primary would be held by the party defendants on a date to be later determined by said party defendants. Seven days later petitioner filed his complaint, which included a mass of compiled statistical data annexed. Had petitioner filed his complaint before the primary was announced, defendants below could have urged, as they have, that the complaint is premature (See Appendix F of Petition for Writ of Mandamus)—but with better grounds. On the other hand, by the time this Court reconvenes in October the general election will be imminent and the moot-

ness problem of *Turman v. Duckworth*, 329 U.S. 675 will then confront petitioner.

To prevent the drastic devaluation of his ballot, this petitioner must obtain an injunction prior to the preparation of the ballot to be used in the general election. The party defendants furthermore have the power to arrange the primary date as they see fit. (In this connection the petitioner shows that on April 21, 1958, and subsequent to the filing of this case in this Supreme Court, defendant Bell announced that he had appointed a sub-committee of the defendant Georgia State Democratic Executive Committee to meet on May 23, 1958 to prepare suggested rules and regulations for any Primary of the defendant party in 1958). This petitioner, or any petitioner seeking to protect his constitutional right to an undiluted ballot in the only meaningful statewide election in Georgia, is forever squeezed between prematurity and mootness. If the petitioner brings his suit before the party defendants make any announcement, it is subject to the possibility of dismissal as premature. If the voter waits a little longer he runs the risk of being dismissed for mootness. This Court has the power to protect the petitioner's right to vote by recognizing the dilemma, advancing the cause and thus preventing the lapse of time from defeating the substantive rights asserted in the complaint below.

The failure to convene the panel court was an unforeseen time complication in the case below. The complaint squarely attacked the constitutionality of a state law; an injunction was sought, a State officer was a party defendant; the merits of the issue raised had never been decided in this Court; and the new jurisdiction conferred on the District Court by the 1957 Civil Rights Act was specifically relied upon.

Despite the delay occasioned by this petition for mandamus the petitioner can still obtain effective relief if this Court grants the writ by the end of this term. The Georgia

General Election ballots need not be finally prepared until the last days of October. In the meanwhile, in July, August and September petitioner may pursue his rights before a panel court. Even if relief should be denied below on the merits, this Court can preserve its appellate jurisdiction by a timely review in October, 1958.

Inasmuch as the mere lapse of time before this case can be reached in the normal course of this Court's business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case, continually teetering between prematurity and mootness, and inasmuch as the time problem was not caused or created by any fault or lack of diligence of petitioner, the Motion to Advance should be granted.

WHEREFORE, petitioner respectfully prays that this Court advance consideration of petitioner's Motion and Petition to such convenient date as will enable the same to be disposed of prior to the expiration of this Term of Court.

Morris B. Abram
Charles L. Weltner
Osgood O. Williams
Maurice N. Maloof

Counsel for Petitioner

PROOF OF SERVICE

I, Morris B. Abram, one of the attorneys for William B. Hartsfield, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of April, 1958, I served copies of the foregoing Motion to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, by mailing a copy in a duly addressed envelope, with first class postage prepaid to his Chambers, Third Floor, United States Post Office Building, Atlanta, Georgia.

2. On John Sammons Bell and George D. Stewart, as Chairman and Secretary, respectively, of the State Democratic Committee of Georgia, on the State Democratic Executive Committee of Georgia, on the Georgia Democratic Party, and on Hon. Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

To Charles J. Bloch, Esq., First National Bank Building, Macon, Georgia, Attorney for all defendants except Ben W. Fortson, Jr.

To Hon. Eugene Cook, The Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens & Southern National Bank Building, Atlanta, Georgia, Attorneys for Ben W. Fortson, Jr., Secretary of State of Georgia.

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